

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAJUAN EDWARD TAYLOR,

Defendant-Appellant.

UNPUBLISHED

March 11, 2010

No. 289982

Wayne Circuit Court

LC No. 08-012957-FC

Before: SERVITTO, P.J., and BANDSTRA and FORT HOOD, JJ.

PER CURIAM.

Defendant was charged with second-degree murder, MCL 750.317. Following a jury trial, he was convicted of the lesser offense of involuntary manslaughter, MCL 750.321, for which he was sentenced as a third habitual offender, MCL 769.11, to 4 to 15 years' imprisonment. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole claim on appeal is that the evidence was insufficient to support his conviction. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing both direct and circumstantial evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). It is for the trier of fact to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

A killing done without malice is manslaughter. *People v Mendoza*, 468 Mich 527, 535; 664 NW2d 685 (2003). "Involuntary manslaughter is a catch-all concept including all manslaughter not characterized as voluntary." *People v Datema*, 448 Mich 585, 594; 533 NW2d 272 (1995). Involuntary manslaughter encompasses three different theories that can support a conviction. *Id.* at 596. Defendant was convicted under the theory that he killed the victim

unintentionally and without malice while doing an unlawful act, that being an assault and battery on the victim.¹ *People v Cummings*, 229 Mich App 151, 154-155; 580 NW2d 480 (1998), rev'd on other grounds 458 Mich 877 (1998). Thus, the prosecution had to prove that defendant caused the victim's death, that when defendant committed the assault and battery on the victim, he intended to injure him, and that defendant caused the victim's death without lawful excuse or justification. *Datema*, 448 Mich at 599, 602, 606-607; CJI2d 16.10.

Defendant contended that he acted in self-defense. A defendant may use force to protect himself from an assault by another. *People v Tillman*, 132 Mich 23, 24; 92 NW 499 (1902); *Detroit v Smith*, 235 Mich App 235, 238; 597 NW2d 247 (1999). A defendant may use nondeadly force in self-defense if he was not engaged in the commission of a crime, he honestly and reasonably believed that he had to use force to protect himself from the imminent unlawful use of force by another, and he used only the amount of force necessary to defend himself. MCL 780.961(1); MCL 780.972(2); CJI2d 7.22. "Once evidence of self-defense is introduced, the prosecutor bears the burden of disproving it beyond a reasonable doubt." *People v Fortson*, 202 Mich App 13, 20; 507 NW2d 763 (1993).

Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find defendant guilty of involuntary manslaughter beyond a reasonable doubt. The evidence indicated that defendant was one of several youths who attacked the victim, and that defendant punched the victim and knocked him to the ground. According to the medical examiner, the victim received a head injury consistent with his head striking a hard surface or object with sufficient force to be fatal. Although defendant told the police that he hit the victim just one time because the victim assaulted him first with a gas can, witnesses at the scene testified that the victim did not have a gas can and did not try to hit anyone. It was up to the jury "to weigh the evidence and decide which testimony to believe." *People v Jones*, 115 Mich App 543, 553; 321 NW2d 723 (1982), aff'd 419 Mich 577 (1984). The jury was "free to believe or disbelieve, in whole or in part, any of the evidence presented at trial," *People v Eisenberg*, 72 Mich App 106, 115; 249 NW2d 313 (1976), and the issue of witness credibility is for the jury to decide and will not be resolved anew on appeal. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). From the evidence presented, the jury could reasonably conclude that defendant participated in an unprovoked attack on the victim, who was beaten and knocked to the ground with such force that he sustained a fatal blow to the head. Thus, the evidence was sufficient to support defendant's conviction.

We affirm.

/s/ Deborah A. Servitto
/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood

¹ The Supreme Court recently explained that manslaughter can be predicated on an unlawful act that is either a felony or a misdemeanor; the critical point is that the defendant acted without malice. *People v Holtschlag*, 471 Mich 1, 8-10; 684 NW2d 730 (2004), remanded 471 Mich 1202 (2004).